

November 8, 2005

MISSOURI RIVER DISPUTE HEADS TO US SUPREME COURT

BISMARCK – Continuing his effort to protect North Dakota's interests in the controversy over Missouri River management, Attorney General Wayne Stenehjem has asked the United States Supreme Court to intervene. Later this week Stenehjem will file a petition asking the high court to review an Eighth Circuit Court of Appeals decision issued last August regarding the U.S. Army Corps of Engineers' management of the river.

The case involves a number of lawsuits filed in 2002 and 2003 by not only upstream states but also environmental organizations, the barge industry, downstream power companies, and the states of Missouri and Nebraska.

North Dakota's suit asserted that the Corps was unlawfully harming Lake Sakakawea's walleye fishery through a river management program that reduces the lake to dangerously low levels during the spring spawning season. The lake's walleye rely on the rainbow smelt for food, and a successful smelt spawn needs a steady lake level.

At the heart of the dispute is whether the Flood Control Act of 1944, which governs management of the river, gives navigation priority over recreation. Although a district court agreed with this position in a 2004 decision, the ruling was appealed by the downstream states and interests to the Eight Circuit Court of Appeals in St. Louis. In a decision issued in August, that court overruled the lower court, concluding that the 1944 Act gives navigation a priority.

Stenehjem stated, "With all due respect, I believe the 8th Circuit misinterpreted the Flood Control Act. Navigation is not entitled to priority over recreation and other interests. I maintain the Flood Control Act requires the Corps to equitably balance all uses." In his petition Stenehjem asks the Supreme Court to overturn the Eighth Circuit decision and clarify the priority issue. He noted, "In light of the overwhelming economic value of recreation on the Missouri River to upstream states, it is imperative to take this case to the Supreme Court."

While acknowledging that the Supreme Court is not obligated to hear the case, Stenehjem explained the case involves several unique issues, which he hopes will capture the court's interest. "The Missouri River is one of the country's most important natural resources. Our case involves the proper management of this precious resource and resolution of decades of fighting among the states which share it," Stenehjem concluded.

North Dakota's petition was prepared by Charles Carvell, Director of the Natural Resources and Indian Affairs Division of the Attorney General's office.